

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 14900 of 2005

Date of Decision: 09.11.2006

Dharam Singh

... Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM : Hon'ble Mr. Justice J.S. Khehar,
Hon'ble Mr. Justice S.D. Anand.

Present : Mr. G.S. Sandhawalia, Advocate,
for the petitioner.

Mr. Ashok Aggarwal, Additional Advocate General, Punjab,
with Mr. B.S. Chahal, Assistant Advocate General, Punjab,
for the respondents.

J.S. Khehar, J. (Oral)

Through the instant writ petition, the petitioner has challenged the action of the authorities in issuing letter dated 23.02.2006 vide which the position of the petitioner in the erstwhile seniority list at serial No.37-A has been brought down to serial No. 65. It is the contention of the learned counsel for the petitioner, that the petitioner rightfully and legally deserves to be placed at Serial No. 37-A in the seniority list of Head Teachers.

On succeeding in the first prayer, noticed herein above, the petitioner claims promotion to the post of Centre Head Teacher and still further to the post of Block Elementary Education Officer, on the plea that he deserves to be promoted to the aforesaid posts with effect from the date persons junior to the petitioner were promoted as such.

The success of the petitioner in the prayer raised in the instant writ petition would eventually have to be determined on the basis of the

position that needs to be assigned to him in the seniority list. The prayer for promotion would subsists if the petitioner's claim for being placed at Serial No. 37-A in the seniority list is accepted.

On the issue in hand, namely, the rightful position that must be assigned to the petitioner in the seniority list, it is the contention of the learned counsel for the petitioner, that the post of the Head Teacher is a District cadre post. It is also the contention of the learned counsel for the petitioner, that the petitioner was inducted into the service of the Education Department in District Ropar. It is sought to be explained that the petitioner was transferred from District Ropar to District Patiala on account of the fact that the native village to which the petitioner belongs came to be transferred to District Patiala, after the induction of the petitioner into the service of the Education Department. The aforesaid facts, have been detailed in paragraph Nos. 2 to 6 of the writ petition.

As against the aforesaid contention of the learned counsel for the petitioner, it is averred in paragraph No.4 of the preliminary submissions contained in the joint written statement filed by the respondents, that the petitioner himself sought his transfer from District Ropar to District Patiala, and that, he was relieved from District Ropar on 16.9.1976 and he joined his assignment in District Patiala on 17.9.1976. It is also expressly noticed in paragraph No.6 of the reply (on merits) that the petitioner changed his District after his induction into service, on his own request. In other words, it is contention of the respondents, that the petitioner sought transfer from one cadre to the other i.e. from the Ropar cadre to the Patiala cadre for his own convenience. In such situation, it is pointed out that an employee who seeks transfer from one cadre to another is placed at the bottom of the

seniority list in the cadre to which he is transferred. It is, therefore, that the claim of the petitioner for determination of his position in the seniority list has been based on the date of his joining in District Patiala, namely, on 17.9.1976.

If the factual position noticed in the submissions advanced by the learned counsel for the petitioner are correct then the petitioner's seniority has to be determined with reference to the date of his induction into service, namely, 8.5.1975. However, if the factual position depicted in the written statement is correct, then the claim of the petitioner in the seniority list has to be determined with reference to 17.9.1976 i.e. the date when he assumed his duties in District Patiala.

Since disputed question of facts have been raised in the instant writ petition, we are of the view that it is not possible for us to adjudicate the same in exercise of our jurisdiction under Article 226 of the Constitution of India. The petitioner, if he is so advised, may seek the redressal of his grievance before an ordinary civil Court.

Disposed of accordingly.

(J.S. Khehar)
Judge

November 09, 2006
vkd

(S.D. Anand)
Judge